

Chapter 2

Tenth Circuit Court Ruling Analysis

2.0 Introduction

2.0.1 Background

This chapter of the Supplemental EIS summarizes the information assembled in relation to the limited deficiencies of the Legacy Parkway Final EIS and the Clean Water Act Section 404 permit, as identified by the U.S. Circuit Court of Appeals for the Tenth Circuit. This chapter summarizes the approach, methodology, results, and conclusions of the technical analysis of the issues raised by the court decision.

As part of the environmental scoping process for the Supplemental EIS, a public open house was held to inform the public about the issues to be analyzed in addressing the court decision. Specific focus-group meetings and community planning information committee (CPIC) meetings were also held to gather public and agency input on the approach to conducting the analyses to address the court's concerns. In addition to the scoping process, the following measures were undertaken.

- The lead agencies requested that UDOT and the technical consultants prepare five preliminary draft technical memoranda, in collaboration with and under the direction of the lead agencies, to address each of the subjects covered in the court ruling.
- The lead agencies requested that the U.S. Environmental Protection Agency (EPA) and U.S. Fish and Wildlife Service (USFWS) serve as cooperating agencies in preparation of the Supplemental EIS.
- The lead agencies provided all the preliminary draft technical memoranda to the cooperating agencies for review and comment.
- The lead agencies considered and responded to cooperating agency comments.
- CPIC meetings on specific topics were held to advise interested parties of the ongoing evaluation and to seek input on the agency approaches and preliminary findings.
- When requested by outside organizations, the lead agencies met with these organizations, including their consultants and experts, to hear additional comments and suggestions on the approaches and preliminary findings.
- UDOT and the consultants incorporated revisions and prepared the final technical memoranda.

- The lead agencies independently reviewed the results presented in the five technical memoranda and the administrative record and, in applying their expertise and professional judgment, determined that the information was sufficient to use in this Supplemental EIS and support initial determinations for the Supplemental EIS.

2.0.2 Technical Memoranda

As described above, five technical memoranda were prepared. The analysis and results of the studies contained in the technical memoranda are hereby incorporated by reference into this Supplemental EIS. The five technical memoranda are listed below.

- Legacy Parkway Technical Memorandum: *Right-of-Way Issues* (HDR Engineering 2005a).
- Legacy Parkway Technical Memorandum: *Denver & Rio Grande Corridor Evaluation* (HDR Engineering 2004a).
- Legacy Parkway Technical Memorandum: *Integration of Mass Transit with Legacy Parkway* (Fehr & Peers 2004).
- Legacy Parkway Technical Memorandum: *Sequencing of the North Corridor Shared Solution* (HDR Engineering 2004b).
- *Legacy Parkway Wildlife Impacts Analysis Technical Memorandum* (Jones & Stokes 2005).

The technical memoranda and their results are summarized in Sections 2.1 through 2.5 of this chapter.